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The Department of Environmental Protection (Department) Grace Period Rule Proposal for Coastal and Land Use Compliance and Enforcement Public Comment Meeting.

Purpose

The Department is seeking comment on potential amendments to the following rules to identify violations as either “minor” or “non-minor” for the purpose of providing grace periods in accordance with N.J.S.A. 13:1D-125 et seq., commonly known as the Grace Period Law. The Grace Period proposals will categorize as minor or non-minor violations of three of the Department’s land use rules. These include the Coastal Permit Program Rules at N.J.A.C. 7:7 (which includes CAFRA, and the Coastal Wetland Law of 1970), the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A), and the Flood Hazard Area Control rule (N.J.A.C. 7:13). These three land use rules are hereinafter collectively referred to as the “affected rules”. Violations of specific regulatory citations of these affected rules will be proposed to be classified as either “minor” or “non-minor”. For minor violations, the proposal will establish a period during which compliance can be achieved without the threat of fines or formal enforcement action. This anticipated proposal will further provide that any violation of the affected rules not identified herein as non-minor will be considered minor pursuant to the Grace Period Law. Minor violations are those violations which do not materially or substantially undermine or impair the goals of the affected rules. Only those violations classified as minor are eligible for a grace period. The Department is seeking input on the draft classification of the violations listed below.

The Grace Period Law

On December 22, 1995, the Legislature enacted the Grace Period Law, N.J.S.A. 13:1D-125 et seq., which requires the establishment of procedures to ensure the consistent application of grace (compliance) periods for minor violations of certain environmental statutes. Pursuant to that law, the Department is required to designate, through rulemaking, certain types of violations of rules contained in sixteen environmental statutes as minor or non-minor violations. Under the Grace Period Law, any person responsible for a minor violation is afforded a period of time by the Department to correct the violation. This period of time is known as a grace period. If the minor violation is corrected as required, then the Department will not assess a penalty. In those cases where a violation is not corrected within the grace period, the Department may pursue enforcement action in accordance with its statutory authority including, but not limited to, the assessment of penalties as may be appropriate within the exercise of the Department’s traditional, judicially recognized enforcement discretion.

The law does not affect the Department’s enforcement authority, including the exercise of enforcement discretion, to treat a violation as minor. In those situations where a

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violation may be considered minor under the rules, but in fact the specific violation as it occurred does not fulfill all the statutory requirements for a minor violation (N.J.S.A. 13:1D-129), the Department intends to reserve its discretion to treat the violation as non-minor.

In designating, through rulemaking, types or categories of violations as minor, the Department must apply the criteria set forth in the law at N.J.S.A. 13:1D-129. These criteria are as follows:

(1) The violation is not the result of the purposeful, knowing, reckless or criminally negligent conduct of the person responsible for the violation;

(2) The violation poses minimal risk to the public health, safety and natural resources;

(3) The violation does not materially and substantially undermine or impair the goals of the regulatory program;

(4) The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department or a local government agency;

(5) In the case of a permit violation, the person responsible for the violation has not been identified in a previous enforcement action by the Department or a local governmental agency as responsible for a violation of the same requirement of the same permit within the preceding 12 month period;

(6) In the case of a violation that does not involve a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Department as responsible for the same or a substantially similar violation at the same facility within the preceding 12 month period;

(7) In the case of a violation of CAFRA, the Freshwater Wetlands Protection Act, The Wetlands Act of 1970, the Flood Hazard Area Control Act or any rule or regulation promulgated hereunder, or permit issued pursuant thereto, the person responsible for the violation has not been identified in a previous enforcement action by the Department or local government agency as responsible for the same or substantially similar violation at the same site or any other site within the preceding 12 month period;

(8) In the case of any violation, the person responsible for the violation has not been identified by the Department or a local agency as responsible for the same or substantially similar violations at any time that reasonably indicate a pattern of illegal conduct and not isolated incidents on the part of the person responsible; and

(9) The activity or condition constituting the violation is capable of being corrected and compliance achieved within the period of time prescribed by the Department.

The Grace Period Law also requires the Department to establish the length of the correction period, which may be no fewer than 30 days or more than 90 days, based upon the nature and extent of the minor violation and a reasonable estimate of the time necessary to achieve compliance. The Department may establish a special class of minor violations that, for public health and safety reasons, must be corrected within a period of fewer than 30 days. N.J.S.A. 13:10-127b.

In order to obtain public input in the development of these regulations, the Department

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will initiate an informal process to discuss and receive input from interested parties. As part of this process, the Department has developed this discussion document setting forth a draft list of non-minor violations for the affected rules and will conduct a workshop to provide an opportunity for interested parties to discuss the draft list of non-minor violations, provide comments, and raise issues. The Department will conduct this workshop on January 24, 2005 from 10-12 am in conference room #1, third floor, Department of Environmental Protection's Pesticide Control Office, 22 South Clinton Ave., 4 Station Plaza, Trenton New Jersey to discuss the application of the Grace Period Law to the affected rules. The Department will accept comments on these potential amendments at the January 24 workshop or via email up to January 24 to Scott Brubaker, Chief, Bureau of Coastal and Land Use Compliance and Enforcement at Scott.Brubaker@DEP.state.nj.us.

The Department will thereafter propose amendments to the affected rules. Those proposed amendments, which identify non-minor violations of the affected rules and provide the terms and conditions by which a grace period shall be afforded, will reflect the Department's consideration of the input obtained at this workshop.

General Discussion

As required by N.J.S.A. 13:1D-125 et seq., the Department is preparing to propose regulations that will exempt certain minor, non-environmental violations from the imposition of penalties if they are corrected within a suitable period of time. In support of this goal, the Department will propose that certain administrative code citations be considered non-minor. For these non-minor violations, the Department may assess a penalty without providing for a formal, mandated period of correction.

For violations that will be classified as non-minor, the adoption of Grace Period provisions for the affected rules will not significantly alter the way the Department currently determines when the assessment of a civil administrative penalty is warranted, or what the specific penalty assessment will be.

The Department has chosen the listed violations as non-minor due to their prohibition of activities that may have a direct and deleterious physical impact on the functionality of the sensitive land use areas regulated by the affected rules. By designating certain violations as non-minor, the Department has determined that, due to the environmental consequences of violating them, they warrant the Department's ability to quickly and decisively assess administrative penalties without allowing for a grace period. In these cases, it is important to assess penalties in a timely manner to compel a violator to initiate corrective measures and as a deterrent to future or potential violations.

Thus, for non-minor violations and for minor violations not corrected within the mandated compliance period, the Department anticipates that it will continue to assess penalties in accordance with the existing regulatory framework in appropriate circumstances.

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In this proposal, the Department is listing all violations which it will consider to be non-minor. All violations not specifically identified in this proposal as non-minor will be considered minor, provided that the statutory criteria are met.

The following is a listing of the violations within each of the affected rules that the Department finds to be non-minor and a justification for each.

Summary of proposed non-minor violations under the Coastal Permit Program Rules which include the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 to 10) and the Coastal Area Facility Review Act (N.J.S.A. 13:19-1 to 33)

Activities within mapped regulated wetlands, which require a permit pursuant to N.J.A.C. 7:7-2.2(a)

The Department considers violations of N.J.A.C. 7:7-2.2(a), which requires that a permit be obtained prior to conducting regulated activities, to be non-minor due to the impact these activities have on the function and value of the wetland resource. The loss of defined wetlands to unrestricted development and manipulation will result in a loss of the beneficial values of the wetlands resource including their ability to act as a buffer against flooding; a waterfowl, bird and wildlife habitat; and the role they play in the accumulation, storage and dispersal of essential nutrients which form the basis of the rich and productive estuarine system. The New Jersey Legislature, in adopting the Wetlands Act of 1970, found and declared that these most vital and productive areas deserve specific and vigorous protection. The presence of tidal wetlands serve the public interest by providing protection from the force of the sea, moderating the weather, and assist in absorbing sewage discharge by the rivers of the land. N.J.A.C. 7:7-2.2(a) specifically prevents temporary or permanent loss of the benefits of tidal wetlands due to the noted prohibited activities. Once this resource is damaged or destroyed, reversing the damage and restoring the functional value of the resource can be difficult.

All prohibited activities as defined at N.J.A.C. 7:7-2.2(b):

N.J.A.C. 7:7-2.2(b) contains a list of prohibited activities which would degrade or destroy coastal wetlands. Therefore, conducting any of these prohibited activities shall be considered a non-minor violation.

Failure to obtain a permit prior to conducting regulated activities pursuant to N.J.A.C. 7:7-1.5(a):

The authority to require that a permit be applied for and issued prior to the conducting of regulated activities is vital to the Department's exercising its responsibility to ensure that activities conducted within areas of coastal jurisdiction do not negatively impact the resource. Unless an application is submitted prior to those activities occurring, a determination of their impact and the Department's jurisdiction cannot be made.

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Failure to comply with any permit condition including those identified at N.J.A.C. 7:7-1.5(b):

Failure to comply with the following permit conditions or limitations as required at N.J.A.C. 7:7-1.5(b) that could destroy or detract from the function of tidal wetlands or the Department's ability to monitor compliance with same shall be considered non-minor: N.J.A.C. 7:7-1.5(b) 1, 2, 4, 5, 6, 7, 12, 14, and 18. The Department will consider as non-minor those permit conditions that define the physical limitation or scope of activities authorized in the permit. The impact of failing to comply with the conditions governing the physical construction authorized in a permit could result in the destruction of the coastal environment beyond the intent of the permit, and lead to a loss of the functional value of the resource.

Failure to notify the Department of site work pursuant to N.J.A.C. 7:7-1.5(b)1

Failure to notify the Department of authorized site work will result in the inability of the Department to evaluate compliance with all terms of the permit including conditions and limitations which may protect adjacent sensitive land areas. The Department being unable to inspect the site while work is progressing could result in the temporary or permanent loss of environmental resources.

Failure to notify of site work under CAFRA and failure to certify that all prior conditions of the permit have been met prior to operation pursuant to N.J.A.C. 7:7-1.5(b)2:

Failure to notify the Department prior to the commencement of operation of a CAFRA development would result in the loss of the Department's ability to complete a final review of all permit requirements that must be met prior to operation. The operation of the development would severely hinder any enforcement incentives to cure violations in a timely fashion while also possibly resulting in the loss of environmental resources.

Failure to allow DEP access pursuant to N.J.A.C. 7:7-1.5(b)4:

Failure to allow for unhindered DEP access to the permitted site is fundamental to the Department's ability to effectively monitor compliance with the permit.

Failure to change plans without written Departmental permission pursuant to N.J.A.C. 7:7-1.5(b)5:

Changing plans without written Departmental permission could result in activities being conducted within areas of coastal jurisdiction that negatively impacts the resource. Unless a plan revision is submitted for approval prior to those activities occurring, a determination of their impact and the Department's jurisdiction cannot be made.

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The failure to maintain a copy of the permit on the site authorized by the permit pursuant to N.J.A.C. 7:7-1.5(b)6:

The failure to maintain a copy of the permit or other authorizing document on the site is determined to be a non-minor violation due to the importance of having that permit available for unannounced compliance evaluations. Site specific, environmentally protective permits are of little value if they are not complied with. Permits are monitored to evaluate compliance, require corrective measures, and assess penalties as deterrents to future violations and as incentives to cure violations. In order to allow for unannounced permit compliance inspections, copies of approved permits and plans must be maintained on the permitted site.

Failure to inform the Department of adverse impacts pursuant to N.J.A.C. 7:7-1.5(b)7:

Failure of the permittee to immediately inform the Department of unanticipated adverse effects on the environment not described in the application or conditions of the permit will result in the continued negative impact to critical environmental resources until such time as the effect is eliminated. Unless the Department is notified of the occurrence of adverse effects, it cannot intervene to advise or compel a cessation and restoration of the impacts.

Failure to comply with all pre construction requirements pursuant to N.J.A.C. 7:7-1.5(b)14:

Failure to comply with all permit conditions that must be satisfied prior to construction would result in the loss of the Department's ability to complete a final review of all such permit requirements. The commencement of construction would severely hinder any of the violator's incentives to cure violations in a timely fashion thus resulting in negative impacts to the resource.

Failure to file a conservation restriction pursuant to N.J.A.C. 7:7-1.5(b)18:

Failure to file a conservation restriction is considered to be a non-minor violation as the conservation restriction requirement is a direct result of a permit applicant or violator receiving the benefit of permanently manipulating a regulated area. The conservation restriction curtails all future development within the designated wetlands, protecting them in perpetuity by alerting prospective and future landowners that a restricted area exists on the site in question. As such, should prospective landowners not receive notice of a conservation restriction as the process envisions, they may not be informed of any limitations on their property and may unwittingly destroy natural resources agreed and intended to be set aside in perpetuity. The conservation restriction is an important statutory tool used to mitigate for losses of the resource and ensure that areas protected by permit or consent agreements will remain undisturbed forever.

Those violations not identified as non-minor shall be considered minor, provided that the conditions for minor violations described in 13:1D-129 are met.

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Table of Violations of the Coastal Permit Program Rules determined to be non-minor:

The violations of N.J.A.C. 7:7, the Wetland Act of 1970 and CAFRA Grace Period category for each violation are as set forth in the following table:

Rule Citation	Rule Description	Category
N.J.A.C. 7:7-2.1(a)	Conducting prohibited activities without Department approval	NM
N.J.A.C. 7:7-2.2(b)	Conducting prohibited activities within coastal wetlands without Department approval	NM
N.J.A.C. 7:7-1.5(a)	Failure to obtain a permit prior to conducting regulated activities	NM
N.J.A.C. 7:7-1.5(b)	Failure to comply with a site specific permit condition listed above that impacts the physical site or functioning of the resource or the Department's ability to monitor same.	NM
N.J.A.C. 7:7-1.5(b)1	Failure to notify the Department in writing at least 3 working days prior to starting work under a permit	NM
N.J.A.C. 7:7-1.5(b)2	Failure to notify the Department and certify that all permit conditions have been met prior to operation of a CAFRA development.	NM
N.J.A.C. 7:7-1.5(b)4	Failure to allow the Department free access	NM
N.J.A.C. 7:7-1.5(b)5	Failure to notify the Department of a change in plans	NM
N.J.A.C. 7:7-1.5(b)6	Failure to post and maintain permits and plans at the permitted site	NM
N.J.A.C. 7:7-1.5(b)7	Failure to inform the Department of adverse effects	NM
N.J.A.C. 7:7-1.5(b)12	Failure to notify the Department of political subdivision's decision not to accept land dedication	NM
N.J.A.C. 7:7-1.5(b)14	Failure to comply with permit conditions prior to the commencement of construction	NM
N.J.A.C. 7:7-1.5(b)18	Failure to file conservation restriction as required	NM

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The following Freshwater Wetland Protection Act violations are considered non-minor:

All regulated activities in freshwater wetlands and State open waters as described in 7:7A-2.1, 7:7A-2.2(a) and (b) conducted without Department authorization.

The Department considers violations of N.J.A.C. 7:7A-2.1, 7:7A-2.2(a) and (b), which generally require that a permit be obtained prior to conducting regulated activities such as filling, grading, or clearing in freshwater wetlands, to be non-minor due to the impact these activities have on the function and values of the freshwater wetland. The New Jersey Legislature, in adopting the Freshwater Wetlands Protection Act in 1987, found and declared that these areas deserve specific and vigorous protection. The presence of freshwater wetlands serve the public interest by providing water quality and flood control, economic and health benefits, wildlife habitat, and aesthetic benefits. Wetlands protect drinking and surface water by filtering out chemicals, pollutants, and sediments. They serve to control flooding by absorbing and holding runoff from heavy rains and snow melts during a period of water excess, and maintain critical base flows to surface waters during times of drought. Freshwater wetlands provide critical habitat for a major portion of the State's fish and wildlife, including endangered, commercial and recreational species. Failure to apply for and receive a permit for regulated activities conducted in freshwater wetlands denies the Department's mandated review of such activities to ensure that those activities do not compromise the intent of the FWPA. These citations are the heart of the Freshwater Wetlands Protection Act in that they specifically prohibit temporary or permanent loss of the benefits of freshwater wetlands. Therefore the Department has determined that violations of these regulations are non-minor.

Conducting regulated activities in transition areas as described in 7:7A-2.6(a):

Transition areas are valuable and operate to filter the adjacent freshwater wetlands.

Failure to comply with the terms of a General Transition Area Waiver issued pursuant to N.J.A.C. 7:7A-6.1 - 6.6:

A transition area waiver is issued for the benefit of an applicant who wishes to conduct regulated activities in the buffer of a wetland and agrees to shrink the buffer in one area of the site in order to expand the buffer in another area. Failure to comply with the approved buffer restrictions impacts the integrity and function of the wetlands as described above for transition areas and subverts the "trade off" benefit the applicant received by the Department authorizing the transition area averaging plan. Therefore the Department has determined violations of this regulation are non-minor.

Failure to comply with the terms of an Individual Freshwater Wetland Permit issued pursuant to N.J.A.C. 7:7A-7-7.5:

The Department issues individual freshwater wetland permits after review and consideration of extensive information. Activities conducted pursuant to individual permits occur in close proximity to freshwater wetlands. Failure to comply with the terms

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of an individual permit could cause serious impacts and destruction to freshwater wetlands. Therefore the Department has determined violations of this regulation are non-minor.

Failure to comply with the terms of an emergency permit issued pursuant to 7:7A-8.2:

The Department issues emergency permits to allow time sensitive activities to occur. Activities conducted pursuant to emergency permits may occur in close proximity to freshwater wetlands. Failure to comply with the terms of an emergency permit could cause serious impacts and destruction to freshwater wetlands. Therefore the Department has determined violations of this regulation are non-minor.

Failure to comply with conditions that apply to all permits or authorizations pursuant to N.J.A.C. 7:7A-13.1 and 4.3:

Failure to comply with certain permit conditions as required at N.J.A.C. 7:7A-13.1 and 4.3 which control the physical scope and size of activities and which protect the functions of the wetland are considered as non-minor. The Department will also consider violation of those permit conditions such as failure to file a deed restriction or failure to have a copy of the permit and plans present on the authorized site as non-minor.

Failure to file a deed restriction as required pursuant to a permit or Order of any kind N.J.A.C. 7:7A-13.1 and 4.3:

Failure to file a deed restriction pursuant to a permit or order of the Department is considered to be a non-minor violation. The deed restriction curtails all future development within the designated wetlands and/or transition areas, protecting them in perpetuity by alerting prospective and future landowners that a restricted area exists on the site in question. As such, the deed restriction is an important statutory tool used to mitigate for losses of the resource and ensure that areas protected by permit or consent agreements will remain undisturbed forever. If a deed restriction is not filed as required, subsequent landowners will not be informed of restrictions on the use of their property and may unwittingly destroy a protected resource. Therefore the Department has determined violations of this regulation are non-minor.

Failure to conduct timely mitigation in accordance with the provisions of 7:7A-15.3:

Failure to conduct timely mitigation as required in a permit or as a result of an enforcement action will allow extended or permanent loss of the benefits of freshwater wetlands. Generally, when mitigation is required, the Department has allowed otherwise prohibited or limited activity to occur or continue to occur in a regulated area. Should the beneficiary not follow through and complete the mitigation, which is intended to compensate for the loss of a resource in one place by the creation or protection of a resource in another place, a net loss of the resource will occur. Therefore, the failure to comply with mitigation requirements is a significant violation which demands immediate enforcement action, and shall be considered non-minor.

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Failure to comply with an Administrative Order and Notice of Civil Administrative Penalty Assessment, Order, Consent Order, or Stipulation of Settlement issued by the Department pursuant to N.J.A.C. 7:7A-16.13:

Department orders and penalties are the primary tools used by the Department to demand correction of a violation. The issuance of an Administrative Order and Notice of Civil Administrative Penalty Assessment, Order, Consent Order, or Stipulation of Settlement compels compliance and acts as a deterrent to future violations. For orders and penalties to accomplish this they must have the weight of the Department's authority to immediately assess a penalty upon determination that a violation has occurred, that those orders and settlements issued by the Department must be complied with to accomplish their intended effect. Therefore the Department has determined violations of this regulation are non-minor.

Submission of false or inaccurate information pursuant to N.J.A.C. 7:7A-16.9:

The submission of false and inaccurate information is determined to be a non-minor violation because it is essential that the Department be able to rely on the veracity of information submitted to it when making permitting and enforcement decisions. If the only consequence of submitting false or inaccurate information was a requirement to resubmit accurate information without a punitive consequence, there would be little deterrence to prevent unscrupulous applicants from submitting false or inaccurate information. When dealing with land use issues, once decisions are made authorizing construction activities or the erection of structures on or near sensitive areas, those decisions are difficult to rescind or reverse if it later is found that they were based on inaccurate or false information. Therefore the Department has determined violations of this regulation are non-minor.

Failure to allow entry pursuant to N.J.A.C. 7:7A-16.10:

Failure to allow entry to a site of known or suspected pollution or violation is determined to be a non-minor violation due to the underlying need for and statutory right the Department and its representatives have to enjoy free, immediate, and full access to properties and sites to investigate, observe, and assess environmental conditions.

Regulated activities conducted within a vernal pool or its buffer without Departmental authorization 7:7A-2.1, 7:7A-2.2(a) and (b):

Vernal pools provide a fragile, unique ecological community that are exceptionally productive and nutrient rich during their seasonal ponding, resulting in rapid growth, high species diversity and high population densities of amphibians. Vernal habitats maintain fish-free aquatic conditions during the amphibian and invertebrate breeding seasons, allowing for greater survivability of larvae and accommodate those species that require a predator-free environment. Vernal pools serve as an important feeding and watering locations for an abundance of both wetland and upland species of wildlife, including

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mammalian, reptilian, amphibian and avian species. Many rare and endangered species depend on vernal pool habitats for survival. Due to the unique ecological value vernal pools and the direct environmental detriment to destruction of same, the Department has determined these violations to be non-minor.

Failure to pay a final civil administrative penalty pursuant to N.J.A.C. 7:7A-16.11:

Failure to pay a final penalty represents a knowing violation of an agency action and does not warrant a grace period. Therefore, the Department considers violations of this rule to be non-minor.

The failure to maintain a copy of the permit on the site authorized by the permit (violation of N.J.A.C. 7:7A-13.1 and 4.3).

The failure to maintain a copy of the permit or other authorized documents on the site is considered to be a non-minor violation due to the importance of having that permit available for unannounced compliance evaluations. Site specific, environmentally protective permits are of little value if they are not complied with. Permits are monitored by the Department to evaluate compliance, require corrective measures, and assess penalties as deterrents to future violations and as incentives to cure violations. Unless the project is constructed consistent with the approved plans, the Department's oversight, expertise, and its responsibility to protect the interests of all residents of New Jersey will be compromised. In order to allow for unannounced permit compliance inspections, copies of approved permits and plans must be maintained on the permitted site. Therefore the Department considers violations of this rule to be non-minor.

Those violations not identified as non-minor, shall be considered minor provided that the criteria for minor violations described in N.J.S.A.13:1D-129 are met.

Minor violations shall include non-compliance with a permit condition of an administrative nature which does not adversely impact the physical resource. Administrative permit conditions that may include but are not limited to "paperwork" requirements such as completion of forms or documentation of other permits or approvals. As noted above, however, failure to file a deed restriction and failure to maintain a permit on the site are non-minor violations.

The violations of N.J.A.C. 7:7A, The Freshwater Wetlands Protection Act and the Grace Period category for each violation are as set forth in the following table:

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Rule Citation	Rule Description	Category
N.J.A.C. 7:7A-2.1, 2.2(a), 2.2(b)	Conducting prohibited activities in a freshwater wetland without Department approval	NM
N.J.A.C. 7:7A-2.6(a)	Conducting prohibited activities in a freshwater wetland transition area without Department approval	NM
N.J.A.C. 7:7A-2.1(f)	Failure to comply with the terms of a freshwater wetlands transition area waiver	NM
N.J.A.C. 7:7A-7-1	Failure to comply with the terms of a freshwater wetlands individual permit	NM
N.J.A.C. 7:7A-8.2(g)	Failure to comply with emergency permits	NM
N.J.A.C. 7:7A-13.1, 4.3	Failure to comply with all conditions of a Department permit or authorization	NM
N.J.A.C. 7:7A-6.1(h)	Failure to file a deed restriction when required by a permit or order	NM
N.J.A.C. 7:7A-15.3	Failure to comply with mitigation requirements	NM
N.J.A.C. 7:7A-16.1	Failing to comply with an AONOCAPA, Order, Consent Order or Stipulation of Settlement	NM
N.J.A.C. 7:7A-16.9	Submission of inaccurate or false information	NM
N.J.A.C. 7:7A-16.10	Failure to allow entry	NM
N.J.A.C. 7:7A-4.3b-16	Conducting prohibited activities in a vernal habitat without Department approval	NM
N.J.A.C. 7:7A-16.11	Failure to pay a final civil administrative penalty	NM
N.J.A.C. 7:7A-13.1(a)-9	Failure to maintain copies of permits on site	NM

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Summary of proposed non-minor violations under the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13.

The following violations are considered non-minor .

Conducting prohibited activities as described in 7:13-2.2 (a) and (c):

Conducting prohibited activities as described in the rules at N.J.A.C. 7:13-2.2(a) and (c), have been determined to be non-minor because these activities have the greatest adverse impact on the flood plain and flood fringe:

N.J.A.C. 7:13-2.2(a) regulates activities conducted in floodways. By its very nature, no obstruction, with few exceptions, can safely be placed within the floodway. The floodway is that area with the greatest potential to be carrying floodwaters under pressure. If unauthorized activities occur, the flood carrying capacity of the site can be compromised significantly, potentially causing the floodwaters to be redirected thereby increasing the flood damage potential.

N.J.A.C. 7:13-2.2(c) prohibits certain activities within the flood fringe, such as disposal or storage of pesticides, industrial, hazardous or solid wastes, radioactive materials, petroleum products or other hazardous materials. Once in the flood waters, the containers holding these materials could break, releasing these deleterious substances into the environment potentially contaminating drinking water, poisoning fish, harming aquatic life and wildlife. Thus, violations of these rules are non-minor.

Violation of a condition of a Department issued Stream Encroachment permit (N.J.A.C. 7:13-1.1(e), 1.3(a), and N.J.S.A. 58:16A-55.2):

The Department carefully reviews permit applications to ensure that authorized activities conducted along regulated watercourses will not negatively impact or impair its ability to handle flood waters. Conducting activities outside the scope of and/or in violation of Department issued permits may cause unknown or unintended consequences not anticipated in the Department's permit review process. Therefore, a violation of a condition of a stream encroachment permit is a non-minor violation.

Failure to comply with top of channel bank restrictions (N.J.A.C. 7:13-3.2(a)):

The retention of vegetation protecting top of bank soils is important to reduce or eliminate erosion and subsequent silting and degradation of water quality. The destruction of this vegetation is thus important to prohibit. Therefore, a violation of this regulation is considered non-minor.

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Any misrepresentation to the Department while seeking a permit (N.J.A.C. 7:13-5.4):

The submission of false and inaccurate information shall be a non-minor violation because it is essential that the Department be able to rely on the veracity of information submitted to it when making permitting and enforcement decisions. If the only consequence of submitting false or inaccurate information was a requirement to resubmit accurate information without a punitive consequence, there would be little deterrence to prevent applicants from submitting false or inaccurate information. When dealing with stream encroachment issues, once decisions are made authorizing construction activities or the erection of structures on or near sensitive land use areas, those decisions and the environmental consequences of them are difficult to rescind, reverse, or repair if it is found that they are based on inaccurate or false information. Therefore the Department considers violations of this regulation to be non-minor.

Conducting a regulated activity within Flood Hazard Area Control Act jurisdiction without prior Department approval (N.J.A.C. 7:13-2.2(a) and (c)):

The Department considers violations of N.J.A.C. 7:13-1.3(a), which requires that a permit be obtained prior to conducting any regulated activity including filling, grading, or constructing along regulated watercourses, to be non-minor. This is due to the adverse impact these activities may have on the regulated areas. The authority of the Department to require a permit for regulated activities along regulated watercourses is the fundamental requirement of the FHACA. If activities are conducted without the required stream encroachment permit, the flood storage capacity of the site can be reduced or eliminated causing additional flood damage elsewhere. The Department's obligation to ensure that flooding is minimized is most seriously impeded when this regulation is violated because it undermines the application of the Department's expertise and experience to manage development in these sensitive areas.

The failure to maintain a copy of the permit on the site authorized by the permit (N.J.A.C. 7:13-1.1(e), 1.3(a), and N.J.S.A. 58:16A-55.2):

As conditioned in all permits, the failure to maintain a copy of the Department issued authorization with all approved plans and/or appendices on-site shall be considered a non-minor violation. A copy of the issued permit and the approved plans and schematics must be located on-site so that, upon inspection, a Department representative can ensure that the project conforms with the permit. In order to allow for unannounced compliance inspections, copies of approved permits and plans must be maintained on the project site.

DRAFT

The violations of N.J.A.C. 7:13, the Flood Hazard Area Control Act and the Grace Period category for each violation are as set forth in the following table:

Rule Citation	Rule Description	Category
N.J.A.C. 7:13-2.2(a) and (c)	Conducting prohibited activities in a floodway or flood fringe without Department approval	NM
N.J.A.C. 7:13-1.1(e), 1.3(a), and N.J.S.A. 58:16A-55.2	Complying with all conditions of stream encroachment permits	NM
N.J.A.C. 7:13-3.2(a)	Failure to comply with top of channel bank restrictions	NM
N.J.A.C. 7:13-5.4	Submission of inaccurate or false information	NM
N.J.A.C. 7:13-1.1(e), N.J.A.C. 7:13-1.3(a)	Conducting activities deemed regulated under the Flood Hazard Area Control Act without Department approval	NM
N.J.A.C. 7:13-1.1(e), 1.3(a), and N.J.S.A. 58:16A-55.2	Maintaining all copies of permits on site	NM